

PHYLLIS COLMAN AND WILLIAM J. COLMAN

IBLA 72-228

72-229

Decided December 27, 1972

Appeals from two Nevada State Office, Bureau of Land Management, decisions rejecting applications for sodium (Nev. 3971) and potassium (Nev. 2512, 2513, 2514, 2515) prospecting permits.

Set aside and remanded.

Administrative Practice -- Applications and Entries: Generally -- Mineral Leasing Act: Generally -- Potassium Leases and Permits: Permits -- Sodium Leases and Permits: Permits

Failure by an applicant to respond to a Bureau of Land Management State Office letter inquiring only whether the applicant is still interested in receiving a prospecting permit is not on adequate ground for rejection of the applicants' prospecting permit application.

APPEARANCES: Phyllis Colman and William J. Colman, pro se.

OPINION BY MR. RITVO

Phyllis Colman has appealed to the Secretary of the Interior from a December 1, 1971, decision by the Nevada State Office, Bureau of Land Management, rejecting a sodium prospecting permit for her lack of diligence in responding to two State Office inquiries dated March 5, 1970, and September 15, 1971, soliciting information regarding Mrs. Colman's interest in receiving a prospecting permit.

William J. Colman has appealed to the Secretary from a December 6, 1971, decision by the Nevada State Office rejecting four applications for potassium prospecting permits on the ground he failed to answer a letter dated September 14, 1971, requesting that he furnish the State Office with information as to whether he was still interested in receiving prospecting permits. Since both Mr. and Mrs. Colman's applications were rejected for the same reason, their appeals will be considered in this decision.

Mrs. Colman filed her sodium prospecting application on July 2, 1969, for 640 acres located in sec. 1, T. 22 N., R. 28 E., M.D.M. Mrs. Colman's application was filed pursuant to the Act of February 25, 1920 as amended, (30 U.S.C. § 261-63 (1970)). A report by the Interior Department's Geological Survey Director concluded that the land was not considered valuable for geothermal resources and recommended that prospecting be authorized. Subsequently, on March 5, 1970, and September 15, 1971, the State Office sent inquiries to Mrs. Colman regarding her desire to obtain prospecting permits. The letters were addressed according to the address on Mrs. Colman's application. The State Office received no response to either letter.

On June 24, 1968, William J. Colman filed four applications for prospecting permits covering 15 sections in T. 22 N., R. 30 E., M.D.M. The total area equaled 9,600 acres and appellant submitted \$ 2,400 in rental fees. Colman was applying for a potassium permit pursuant to the Act of February 7, 1927, as amended, (30 U.S.C. §§ 281-87 (1970)). The record includes a letter dated September 18, 1968, to the Nevada Land Office from Wayne Whitcanack, Regional Real Estate Officer for the Bureau of Land Management. In his letter Whitcanack explained that all 15 sections of land in Colman's application were under a Bureau of Reclamation withdrawal, the Newlands Project, with nearly all of the sections being located within the Falcon National Wildlife Refuge established by Executive Order No. 5606, dated April 22, 1931. Whitcanack stated that the Bureau of Land Management had no objections to the issuance of the prospecting permits except for four sections situated within the Pelican Island area of the refuge which the Bureau of Sport Fisheries and Wildlife has included in their overall plans of development for the Stillwater Wildlife Management Area.

The record also contains a memorandum dated February 20, 1970, by the Nevada Land Office noting that Coleman's permit applications were being held in abeyance due to Colman's request to convert to sodium permit applications. Apparently, no action was taken on Colman's request. A third insert in the record is a copy of a letter dated September 14, 1971, from the Nevada State Office to Colman, requesting Colman to inform the office as to whether he was still interested in receiving prospecting permits.

After failing to receive answers to their inquiries, the State Office issued decisions on December 1 and 6, 1971, rejecting Mr. and Mrs. Colman's prospecting applications. The Colmans filed a notice of appeal on January 3, 1972, and submitted a statement of reasons on February 3, 1972. The Colmans neither admit nor deny having received the State Office letters of March 5, 1970, or September 14 and 15, 1971. They say that a thorough search in their files failed to disclose any such correspondence.

Prior Departmental decisions have placed the burden on an applicant to keep the Department informed of any address changes or bear the consequences of disrupted or missing communications. Kewanee Oil Co., 67 I.D. 305, 307 (1960); Betty Ketchum, 67 I.D. 40, 43 (1960). However, the Board is of the opinion that the result imposed by the State Office was too harsh considering the nature of the inquiry. The letters addressed to Mr. Colman from the Chief of the Lands and Mineral Operations, A. John Hillsamer, merely included the following:

Prior to requesting additional reports on these applications I would like to know if you are still interested in receiving permits. If you aren't withdrawal of the applications will expedite refund of the moneys held on the applications.

Hillsamer's letter to Mrs. Colman contained the same instructions.

The letters do not adequately communicate the necessity of response. Nor do the letters mention that failure to reply will result in rejection of the prospecting permit applications. In fact an interpretation that failure to reply would indicate a continuing interest in the permits would be justifiable considering the wording of the letters, especially since the last sentence states that prompt withdrawal of the applications would "expedite refund of the advance rental." No response would lead to a presumption that the Colmans were not interested in a refund of their advance rental but rather desired to keep their permit applications. In any event, the Colman's appeal demonstrates sufficient interest on their part in their sodium and potassium prospecting permit applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and the cases are remanded for further proceedings consistent herewith.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Joan B. Thompson, Member.

